

SECOND REGULAR SESSION

HOUSE BILL NO. 1374

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (27).

Pre-filed January 3, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3566L.011

AN ACT

To repeal sections 198.029, 198.036, 198.067, 198.082 and 660.317, RSMo, and to enact in lieu thereof five new sections relating to long-term care facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 198.029, 198.036, 198.067, 198.082 and 660.317, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 198.029, 198.036,
3 198.067, 198.082 and 660.317, to read as follows:

198.029. The provisions of section 198.026 notwithstanding, whenever a duly authorized
2 representative of the department finds upon inspection of a licensed facility, and the director of
3 the department finds upon review, that the facility or the operator is not in substantial compliance
4 with a standard or standards the violations of which would present either an imminent danger
5 to the health, safety or welfare of any resident or a substantial probability that death or serious
6 physical harm would result and which is not immediately corrected, the department shall:

7 (1) Give immediate written notice of the noncompliance to the operator, administrator
8 or person managing or supervising the conduct of the facility **and a copy of such notice to the**
9 **attorney general** at the time the noncompliance is found;

10 (2) Make public the fact that a notice of noncompliance has been issued to the facility.
11 Copies of the notice shall be sent to appropriate hospitals and social service agencies;

12 (3) Send a copy of the notice of noncompliance to the division of family services of the
13 department of social services, the department of mental health, and any other concerned federal,
14 state or local government agencies. The facility shall post in a conspicuous location in the
15 facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

198.036. 1. The department may revoke a license in any case in which it finds that the
2 operator:

3 (1) Failed or refused to comply with class I or II standards, as established by the
4 department pursuant to section 198.085; or failed or refused to comply with class III standards
5 as established by the department pursuant to section 198.085, where the aggregate effect of such
6 noncompliances presents either an imminent danger to the health, safety or welfare of any
7 resident or a substantial probability that death or serious physical harm would result **or where**
8 **the operator was cited for failure to comply with a particular class I standard on two**
9 **different occasions within a twenty-four month period or where the operator was cited for**
10 **failure to comply with a particular class II or III standard on two different occasions**
11 **within a twelve month period;**

12 (2) Refused to allow representatives of the department to inspect the facility for
13 compliance with standards;

14 (3) Knowingly acted or knowingly omitted any duty in a manner which would materially
15 and adversely affect the health, safety, welfare or property of a resident; or

16 (4) Demonstrated financial incapacity to operate and conduct the facility in accordance
17 with the provisions of sections 198.003 to 198.096.

18 2. Upon revocation of a license, the director of the department shall so notify the
19 operator in writing, setting forth the reason and grounds for the revocation. Notice of such
20 revocation shall be sent either by certified mail, return receipt requested, to the operator at the
21 address of the facility, or served personally upon the operator. The department shall provide the
22 operator notice of such revocation at least ten days prior to its effective date.

198.067. 1. An action may be brought by the department, or by the attorney general on
2 his or her own volition or at the request of the department or any other appropriate state agency,
3 to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096,
4 to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to
5 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action
6 brought pursuant to the provisions of this section shall be placed at the head of the docket by the
7 court, and the court shall hold a hearing on any action brought pursuant to the provisions of this
8 section no [less] **later** than fifteen days after the filing of the action.

9 2. The department **or attorney general** may bring an action in circuit court to recover
10 a civil penalty against the licensed operator of the facility as provided by this section. Such
11 action shall be brought in the circuit court for the county in which the facility is located. The
12 circuit court shall determine the amount of penalty to be assessed within the limits set out in this
13 section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

14 3. The operator of any facility which has been cited with a violation of sections 198.003

15 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of
16 Section 1396r of Title 42 of the United States Code or the regulations established pursuant
17 thereto, is liable to the state for civil penalties of up to ten thousand dollars for each day that the
18 violations existed or continue to exist. Violations shall be presumed to continue to exist from
19 the time they are found until the time the division of aging finds them to have been corrected.
20 The amount of the penalty shall be determined as follows:

21 (1) For each violation of a class I standard, not less than one [hundred fifty] **thousand**
22 dollars nor more than [one] **five** thousand dollars;

23 (2) For each violation of a class II standard, not less than [fifty] **five hundred** dollars nor
24 more than [five hundred] **one thousand** dollars;

25 (3) For each violation of a class III standard, not less than [fifteen] **one hundred** dollars
26 nor more than [one] **five** hundred fifty dollars;

27 (4) For each violation of a federal standard which does not also constitute a violation of
28 a state law or regulation, not less than [two hundred fifty] **five hundred** dollars nor more than
29 [five hundred] **one thousand** dollars;

30 (5) For each specific class I violation by the same operator which has been cited
31 **previously** within the past twenty-four months and for each specific class II or III violation by
32 the same operator which has been cited **previously** within the past twelve months, double the
33 amount last imposed.

34

35 As used in this subdivision the term "violation" shall mean a breach of a specific state or federal
36 standard or statute which remains uncorrected and not in accord with the accepted plan of
37 correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026
38 or the regulations established pursuant to Title 42 of the United States Code. A judgment
39 rendered against the operator of a facility pursuant to this subsection shall bear interest as
40 provided in subsection 1 of section 408.040, RSMo.

41 4. Any individual who willfully and knowingly certifies pursuant to subsection
42 (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement
43 in a resident assessment is subject to a civil penalty of not more than one thousand dollars with
44 respect to each assessment. Any individual who willfully and knowingly causes another
45 individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United
46 States Code a material and false statement in a resident assessment is subject to a civil penalty
47 of not more than five thousand dollars with respect to each assessment.

48 5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not
49 bar the imposition of any other remedy.

50 6. Penalties collected pursuant to this section shall be deposited in the division of aging

51 elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such
52 penalties shall not be considered a charitable contribution for tax purposes.

53 7. To recover any civil penalty, the moving party shall prove by clear and convincing
54 evidence that the violation occurred.

55 8. The licensed operator of a facility against whom an action to recover a civil penalty
56 is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo,
57 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount
58 of the civil penalty recommended by the moving party in its petition shall be reduced by
59 twenty-five percent and the confessed judgment shall be entered by the circuit court at the
60 reduced amount.

61 9. The amount of any civil penalty assessed by the circuit court pursuant to this section
62 [shall] **may** be reduced by the amount of any civil monetary penalty which the licensed operator
63 of the facility may establish it has paid pursuant to the laws of the United States for the breach
64 of the same federal standards **and arising out of the same conduct** for which the state action
65 is brought.

66 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this
67 section, any facility which is cited with a violation of a class I standard pursuant to subsection
68 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual
69 nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be
70 liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds
71 licensed to the facility, up to a maximum of [ten] **twenty-five** thousand dollars pursuant to
72 subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this
73 section shall be incurred immediately upon the citation of the violation and shall not be affected
74 by any subsequent correction of the violation. For the purposes of this section, "serious physical
75 injury" means physical injury that creates a substantial risk of death or that causes serious
76 disfigurement or protracted loss or impairment of the function of any part of the body.

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care
2 facility after January 1, 1980, shall have successfully completed a nursing assistant training
3 program approved by the department or shall enroll in and begin the first available approved
4 training program which is scheduled to commence within [ninety] **sixty** days of the date of the
5 nursing assistant's employment **and shall be completed within ninety days of employment.**
6 Training programs shall be offered at a location most reasonably accessible to the enrollees in
7 each class. The program may be established **and carried out** by the skilled nursing or
8 intermediate care facility **so long as that facility has not been cited for any class I violation**
9 **within the past twenty-four months or two or more class II or III violations within the past**
10 **twelve months**, by a professional organization, or by the department, and training shall be given

11 by the personnel of the facility, by a professional organization, by the department, by any junior
12 college or by the vocational education department of any high school. **No program shall offer**
13 **or provide training pursuant to this section unless the department has approved the**
14 **program prior to the offering or provision of such training.**

15 2. As used in this section the term "nursing assistant" means an employee, including a
16 nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to
17 provide or assist in the provision of direct resident health care services under the supervision of
18 a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply
19 to any person otherwise licensed to perform health care services under the laws of this state. It
20 shall not apply to volunteers or to members of religious or fraternal orders which operate and
21 administer the facility, if such volunteers or members work without compensation.

22 3. The training program after January 1, 1989, shall consist of at least the following:

23 (1) A training program consisting of at least seventy-five classroom hours of training on
24 basic nursing skills, clinical practice, resident safety and rights, the social and psychological
25 problems of residents, and the methods of handling and caring for mentally confused residents
26 such as those with Alzheimer's disease and related disorders, and one hundred hours supervised
27 and on-the-job training. The one hundred hours **shall be completed within ninety days of**
28 **employment and** may consist of normal employment as a nurse [assistants] **assistant** under the
29 supervision of a licensed nurse; and

30 (2) Continuing in-service training to assure continuing competency in existing and new
31 nursing skills. [All nursing assistants trained prior to January 1, 1989, shall attend, by August
32 31, 1989, an entire special retraining program established by rule or regulation of the department
33 which shall contain information on methods of handling mentally confused residents and which
34 may be offered on premises by the employing facility.]

35 4. Nursing assistants who have not successfully completed the nursing assistant training
36 program prior to employment may begin duties as a nursing assistant only after completing an
37 initial [twelve] **thirty** hours of basic orientation approved by the department and may provide
38 direct resident care only if under the general supervision of a licensed nurse prior to completion
39 of the seventy-five classroom hours of the training program.

660.317. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4 (2) Provides in-home services under contract with the department;

5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in
6 health care facilities; or

7 (4) Is an entity licensed pursuant to chapter 197, RSMo;

8 (5) Is a public or private facility, day program, residential facility or specialized service
9 operated, funded or licensed by the department of mental health.

10 2. For the purpose of this section "patient or resident" has the same meaning as such term
11 is defined in section 43.540, RSMo.

12 3. [Beginning August 28, 1997, not later than two working days of] **Prior to** hiring any
13 person for a full-time, part-time or temporary position to have contact with any patient or
14 resident the provider shall, or in the case of temporary employees hired through an employment
15 agency, the employment agency shall prior to sending a temporary employee to a provider:

16 (1) Request a criminal background check as provided in section 43.540, RSMo.
17 Completion of an inquiry to the highway patrol for criminal records that are available for
18 disclosure to a provider for the purpose of conducting an employee criminal records background
19 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
20 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
21 shall not be construed to exempt a provider from further inquiry pursuant to common law
22 requirements governing due diligence; and

23 (2) Make an inquiry to the department of social services, whether the person is listed on
24 the employee disqualification list as provided in section 660.315.

25 4. When the provider requests a criminal background check pursuant to section 43.530,
26 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
27 of such record check.

28 5. An applicant for a position to have contact with patients or residents of a provider
29 shall:

30 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
31 request a criminal records review;

32 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
33 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
34 and shall include any suspended imposition of sentence, any suspended execution of sentence
35 or any period of probation or parole; and

36 (3) Disclose if the applicant is listed on the employee disqualification list as provided
37 in section 660.315.

38 6. An applicant who knowingly fails to disclose his criminal history as required in
39 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
40 A misdemeanor if the provider knowingly hires a person to have contact with patients or
41 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or
42 any other state or has been found guilty of a crime, which if committed in Missouri would be a
43 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection

44 3 of section 198.070, RSMo, or section 568.020, RSMo.

45 7. The highway patrol shall examine whether protocols can be developed to allow a
46 provider to request a statewide fingerprint criminal records review check through local law
47 enforcement agencies.

48 8. A provider may use a private investigatory agency rather than the highway patrol to
49 do a criminal history records review check, and alternatively, the applicant pays the private
50 investigatory agency such fees as the provider and such agency shall agree.

51 9. The department of social services shall promulgate rules and regulations to waive the
52 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
53 cause" means the department has made a determination by examining the employee's prior work
54 history and other relevant factors that such employee does not present a risk to the health or
55 safety of residents.